

### REMARKS

By the above amendments it is proposed to amend claims 1, 6-8 and 11. Thus, with entry of the amendment claims 1, 4-8 and 11 would remain in the application.

Applicants gratefully acknowledge the courteous telephone interview granted by Examiner Jason-Dennis Stewart to their undersigned attorney on October 30, 2008. During the telephone interview proposed amendments to the claims along the lines of the amended claims above were discussed and arguments were advanced by the undersigned in support of the patentability of the claims over the applied references to Tornier U.S. 2003/0149485 A1 and Guederian, et al., U.S. 2004/0059424 A1. The Examiner made several helpful suggestions during the interview concerning claim language reciting the projecting collar, 15 in Figure 5, in relation to the annular-shaped section, 11. The Examiner agreed that with changes of the type proposed in the amended claims above, the claims appear to distinguish over the applied references. However, no formal agreement was reached concerning the allowability of the claims since the Examiner indicated he would have to conduct further searching before reaching a conclusion concerning the allowance of the claims.

As noted by the undersigned during the October 30, 2008 telephone interview, the improved shoulder joint prosthesis and method of fitting a shoulder joint prosthesis of the present invention as recited in the application claims as amended above are specific to an at least two-piece humeral head prosthesis composed of a calotte or joint head, and an attachment body of an at least two-part design. With reference to the disclosed example embodiment, the at least two-piece design attachment body of the shoulder

prosthesis includes an attachment part for the mounting attachment of the calotte, as well as a mounting segment to effect an at least cement-free anchoring of the attachment body within the bone. The attachment part, with reference to the example embodiment, is a disk-like positioning body 5 having a medial hole 19 about an axis of the body with a relatively large diameter annular-shaped section 11 about the medial hole and axis. A first side of the annular-shaped section has fixation hooks or projections 13 thereon to provide a provisional positionally-correct fixation to a pretreated bone. A second side of the annular-shaped section opposite the first side has a relatively smaller diameter at least nearly circular projecting collar 15 about the medial hole and axis. The collar projects outwardly from the second side of the annular-shaped section with an inner surface configured to position the mounting segment 7 when effecting the anchoring and an external surface configured for attachment of the calotte 3 thereon. The mounting segment is an anchoring body having a hollow screw provided in order to affix the positioning body to the bone through the medial hole and the projecting collar and the annular-shaped section. With this construction, the collar guides the hollow screw during the method of fitting a shoulder joint prosthesis to ensure the positionally correct insertion of the hollow screw into the medial hole of the disk-like positioning body as discussed in the paragraph bridging pages 4 and 5 of the Substitute Specification. The cited references do not anticipate, 35 U.S.C. §102, or render obvious, 35 U.S.C. §103, the improved shoulder joint prosthesis and method of fitting a shoulder joint prosthesis of the invention as recited in the claims as amended,

In contrast, the patent application publication of Guederian, et al., U.S. 2004/0059424 A1, discloses a metal back prosthetic glenoid component with cemented pegs and hollow metal cage screw. The prosthetic glenoid component of Guederian, et al. is not a humeral head prosthesis but rather a prosthetic glenoid component for attachment to the scapula to replace a natural socket of a shoulder and to provide a bearing surface for a head portion of an arm bone or humerus. The humeral head prosthesis of the invention, on the other hand, has an attachment body of an at least two-part design which is affixed to the humerus as recited in claim 8 as amended. A further distinction is that the shoulder joint prosthesis and method of fitting the shoulder joint prosthesis of the invention involve cement-free anchoring of the attachment body within the bone. In Geuderian, et al., the prosthetic glenoid is attached by first drilling at least two holes in the scapula, not the humerus, filling the holes with cement and positioning the pegs 4 in the holes for anchoring the prosthetic glenoid component within the bone.

Applicants claimed shoulder joint prosthesis and method of fitting the same are further distinguished from the prosthetic glenoid component of Guederian, et al. by the use of an attachment part which is a disk-like positioning body having a medial hole 19 about an axis of the body with a relatively large diameter annular-shaped section 11, Figure 5 of the embodiment, about the medial hole and axis, a first side of the annular-shaped section 11 having fixation hooks or projections 13 thereon to provide a provisional positionally-correct fixation to a pretreated bone, and a second side of the annular-shaped section opposite the first side having a relatively smaller diameter at least nearly circular projecting collar 15 about the medial

hole and axis, the collar projecting outwardly from the second side of the annular-shaped section 11 with an inner surface configured to position the mounting segment 7 when effecting the anchoring and an external surface configured for attachment of the calotte 3 thereon. The glenoid prosthesis 200, Figure 4 in Guederian, et al. does not have a projecting collar as disclosed and claimed by Applicants in the claims as amended. The cement-free anchoring of the shoulder joint prosthesis of the present invention is only possible by using the hollow screw 7 provided to affix the positioning body to the bone through the projecting collar 15 and the medial hole 19. Guederian, et al. do not provide a projecting collar and do not practice a cement-free anchoring of the their prosthesis.

Tornier U.S. 2003/0149485 A1 is directed to a prosthetic element comprising two components and process for assembling such a prosthetic element. The prosthetic element, like that in Guederian, et al., is for use in production of the glenoid part of a total shoulder prosthesis where the prosthesis is anchored in the glenoid cavity of the shoulder. The Tornier prosthetic element is not a humeral head prosthesis wherein the attachment body is attached in a cement-free anchoring to the humerus as disclosed and claimed by Applicants. Furthermore, the construction of the prosthesis is quite different from the prosthesis of the invention as recited in the application claims as amended. In particular, Tornier does not employ an attachment part having a disk-like positioning body with a medial hole about an axis of the body with a relatively large diameter annular-shaped section about the medial hole and axis, a first side of the annular-shaped section having fixation hooks or projections thereon to provide a provisional positionally-correct fixation to a

pretreated bone, and a second side of the annular-shaped section opposite the first side having a relatively smaller diameter at least nearly circular projecting collar about the medial hole and axis, the collar projecting outwardly from the second side of the annular-shaped section with an inner surface configured to position the mounting segment when effecting the anchoring and an external surface configured for attachment of the callote thereon as recited in Applicants claims as amended.

The two cited references relied upon in the rejections in the outstanding Office Action are quite different structurally and functionally from the humeral head prosthesis and method of fitting the same of the present invention as noted in the above discussion. One of ordinary skill in the art would not find Applicants claimed invention obvious within the intent of 35 U.S.C. §103 when considering the two references. Accordingly, reconsideration and allowance of the amended claims is requested.

A Request for Continued Examination is filed herewith as suggested in the interview in order to have the amended claims considered at this time. A Petition for Extension of Time to permit the timely filing of the Amendment is also filed herewith.

Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-

2135 (Case No. 635.46315X00) and please credit any excess fees to such deposit account.

Respectfully submitted,

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Attachments